

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CENTRAL RESERVE LIFE INSURANCE	:	CIVIL ACTION
COMPANY	:	
	:	
v.	:	
	:	
DOROTHY A. MARELLO	:	No. 00-3344

MEMORANDUM AND ORDER

J. M. KELLY, J.

JANUARY , 2001

Presently before the Court is a Motion to Amend and Correct this Court's Order of October 3, 2000, filed by the Defendant, Dorothy A. Mareello ("Mareello"). Mareello has health insurance coverage through the Plaintiff, Central Reserve Life Insurance Company ("Central Reserve"). Mareello sought medical treatment that Central Reserve refused to cover. Mareello subsequently filed suit in state court to compel Central Reserve to cover the cost of her treatment. Central Reserve filed suit in federal court to compel Mareello to arbitrate her claims pursuant to an arbitration clause contained in her insurance policy. The Court granted Central Reserve's motion on October 3, 2000. Mareello now asks the Court to amend and correct that Order pursuant to Federal Rule of Civil Procedure 59(e). For the following reasons, Mareello's motion is denied.

I. BACKGROUND

Central Reserve, an Ohio corporation registered to transact

business in Pennsylvania, sells medical insurance policies to individuals and small groups. Central Reserve issued an individual preferred provider medical indemnification policy ("Insurance Policy") to Mareello, a Pennsylvania citizen who resides in Lancaster, Pennsylvania. Mareello filled out an application for insurance that stated, directly above her signature, that "[a]ny disputes arising under the Policy are subject to an appeals procedure, including arbitration, which may be binding, depending on state law." The Insurance Policy issued to Mareello contained an arbitration provision that reads:

After exhaustion of the Appeal of Decision procedures, any dispute arising out of or related to the Policy that remains shall be settled by arbitration in accordance with applicable federal or state laws and the Insurance Dispute Resolution Procedures, as amended, and administered by the American Arbitration Association

Mareello signed the Insurance Policy below the arbitration clause. Mareello asserts, however, that Central Reserve neither told her to read the clause nor instructed her as to its effect.

In April of 1999, Mareello was diagnosed with primary amyloidosis. Mareello underwent chemotherapy, which Central Reserve covered. Mareello then sought treatment at the Mayo Clinic in Rochester, Minnesota. In December, 1999, Mareello's doctors proposed treating her with high dose chemotherapy with peripheral stem cell rescue. Central Reserve considered this treatment experimental and notified Mareello that the Insurance

Policy did not cover it.

Marello disagreed with Central Reserve and proceeded through an administrative appeal process. Despite the arbitration clause in her Insurance Policy, Marello filed a complaint in the Court of Common Pleas of Lancaster County, Pennsylvania on June 6, 2000.¹ Marello sought an injunction ordering Central Reserve to pay for her proposed medical treatment and also alleged, among other things, fraud and bad faith. On June 30, 2000, Central Reserve filed with this Court a Complaint and Motion to Compel Arbitration and Stay State Court Proceedings, which contended that the Insurance Policy, pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq. (1994), required Marello to arbitrate rather than litigate her claims. While this Court considered the merits of that Motion to Compel, Central Reserve filed its Preliminary Objections to Marello's state court Complaint on July 5, 2000. Central Reserve raised these objections after invoking the FAA in its federal suit before this Court. Those objections raised, in part, the arbitrability of Marello's claims under the FAA. The state court judge assigned to that case overruled Central Reserve's Preliminary Objections on September 20, 2000. On October 4, 2000, however, this Court granted Central Reserve's Motion to Compel Arbitration. Marello

¹ Marello v. Central Reserve Life Insurance Company, et al., No. CI-00-05769.

then filed a Motion to Amend and Correct this Court's Order of October 3, 2000, which the Court will now consider.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allow parties to file motions for reconsideration or amendment of a judgment. These motions should be granted sparingly. A motion should only be granted if: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to correct a clear error or prevent manifest injustice. See, e.g., General Instrument Corp. v. Nu-Tek Electronics, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d Cir. 1999); Environ Prods., Inc. v. Total Containment, Inc., 951 F. Supp. 57, 62 n.1 (E.D. Pa. 1996). A change of law is considered controlling on a district court when the change comes from the United States Supreme Court or the United States Court of Appeals that contains that district. North River Ins. v. CIGNA Reins. Co., 42 F.3d 1194, 1219-20 (3d Cir. 1995). Dissatisfaction with the Court's ruling is not a proper basis for reconsideration. See Burger King Corp. v. New England Hood and Duct Cleaning Co., 2000 U.S. Dist. LEXIS 1022 (E.D. Pa. Feb. 4, 2000).

III. DISCUSSION

Marello points to no changes in controlling law since the Court's Order of October 3, 2000.² Nor does Marello point to any relevant new evidence that has since become available.³ Accordingly, Marello's motion turns on whether the Court committed clear error.

To show clear error, Marello invokes several arguments she already made in opposition to Central Reserve's Motion to Compel. None of these arguments is persuasive. For example, Marello asks the Court to reconsider its reading of Shaddock v. Christopher J. Kaclik, Inc., 713 A.2d 635 (Pa. Super. Ct. 1998) and Younger v. Harris, 401 U.S. 37 (1971), and suggests that Marello's state court Complaint did indeed specifically allege fraud in the inducement regarding the arbitration clause of the Insurance Policy. Marello has failed to convince the Court that its reading of Shaddock was clearly erroneous,⁴ that Younger

² Marello filed supplemental memoranda that brought Thermo-Sav, Inc. v. Bozeman, No. 99-155, 2000 WL 1520276 (Ala. Oct. 13, 2000) and Brown & Root, Inc. v. Breckenridge, 211 F.3d 194 (4th Cir. 2000) to the Court's attention. These cases are not controlling on this Court. They may, however, be persuasive, and the Court will therefore consider them in determining whether clear error exists.

³ Marello cites many facts that the alternate dispute resolution procedures of the Insurance Policy are no longer in effect, and therefore impossible to effectuate. Marello already cited such facts, however, in support of her Motion to Dismiss.

⁴ The Court found that Marello could arbitrate her bad faith claims under Pennsylvania law. See Shaddock, 713 A.2d at

abstention is appropriate,⁵ or that her state court Complaint alleged fraud in the inducement of the arbitration clause itself.⁶ Mareello's Motion to Amend does, however, present two interesting arguments, which the Court will examine at length. First, Mareello suggests that no federal court has the authority to issue an arbitral antisuit injunction. Second, Mareello contends that, under the Rooker-Feldman doctrine, this Court lacked subject matter jurisdiction to issue such an injunction.

A. Arbitral Antisuit Injunctions

Mareello contends that federal courts may not issue injunctions that stay court proceedings pending arbitration, so

638-39; Nealy v. State Farm Mut. Auto. Ins. Co., 695 A.2d 790, 792-94 (Pa. Super. Ct. 1997). For purposes of this Motion to Amend, the Court's finding was not clearly erroneous. First, federal courts are not bound by intermediate appellate state courts in determining state law issues in diversity cases. McGowan v. University of Scranton, 759 F.2d 287, 291 (3d Cir. 1985). Moreover, even if Mareello could not arbitrate her bad faith claim, arbitration of her other claims should nonetheless proceed because the FAA requires piecemeal litigation if necessary to effectuate a valid arbitration agreement. See, e.g., Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20 (1983).

⁵ Younger abstention is inappropriate because this Court's refusal to compel arbitration would effectively nullify Central Reserve's federal statutory rights under the FAA. See, e.g., Olde Discount Corp. v. Tupman, 1 F.3d 202, 213 (3d Cir. 1993).

⁶ See, e.g., Reliance Ins. Co. v. Moessner, 121 F.3d 895, 903 n.7 (3d Cir. 1997); Audio Video Ctr., Inc. v. First Union Nat'l Bank, 84 F. Supp. 2d 624, 627 (E.D. Pa. 2000); Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983).

called "arbitral antisuit injunctions."⁷ The authority of federal courts' to issue injunctions derives from the All Writs Act, 28 U.S.C. § 1651(a) (1994), which states, "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The federal courts' seemingly broad power to issue writs is limited, however, by the Anti-Injunction Act ("AIA"), 28 U.S.C. § 2283 (1994), which states "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

In the instant case, the Court enjoined a state court proceeding pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-307 et seq. (1994). That Act of Congress does not expressly authorize the issuance of arbitral antisuit injunctions. Nevertheless, such injunctions are necessary in aid of a federal court's jurisdiction, promote the federal policy

⁷ Although Marella already raised this point in her opposition to Central Reserve's Motion to Compel, she now contends that the Court's issuing such an injunction constituted clear error. While motions for reconsideration are not intended as a means of affording unhappy litigants a second bite at the apple, the Court recognizes that this area of the law is, at best, unsettled. The Court will therefore review its decision for the existence of plain error.

favoring arbitration, and preserve the integrity of arbitration. See, e.g., Specialty Bakeries, Inc. v. RobHal, Inc., 961 F. Supp. 822, 829-31 (E.D. Pa. 1997), aff'd as modified and remanded sub nom. Speciality Bakeries, Inc. v. HalRob, 129 F.3d 726 (3d Cir. 1997). But see Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 25 n.32 (1983) (reserving the question of whether AIA precludes federal courts from issuing arbitral antisuit injunctions). Indeed, allowing a state court suit to proceed on these facts "would eviscerate the arbitration process and make it a 'hollow formality,' with needless expense to all concerned." Specialty Bakeries, 961 F. Supp. at 830 (citing United States v. District of Columbia, 654 F.2d 802, 810 (D.C. Cir. 1981)). Accordingly, this Court has the authority under the FAA to stay state court proceedings pending arbitration. See generally Great W. Mortgage Corp. v. Peacock, 110 F.3d 222 (3d Cir. 1997) (affirming without discussion court's issuance of arbitral antisuit injunction). This Court's issuance of an arbitral antisuit injunction was not in error.

B. The Rooker-Feldman Doctrine

Marello also contends that, under the Rooker-Feldman doctrine, this Court lacked subject matter jurisdiction to impose such an injunction even if it otherwise had the statutory power to do so. Although Marello failed to raise the Rooker-Feldman

doctrine prior to the instant Motion to Amend, she may nonetheless raise it now because it calls into question the subject matter jurisdiction of this Court.⁸ Doctor's Assocs., Inc. v. Distajo, 107 F.3d 126, 137 (2d Cir. 1997); Moccio v. New York State Office of Court Admin., 95 F.3d 195, 198 (2d Cir. 1996); Ritter v. Ross, 992 F.2d 750, 752 (7th Cir. 1993).

Federal law vests the United States Supreme Court with exclusive subject matter jurisdiction to review the decisions of the highest state courts for compliance with the United States Constitution. 28 U.S.C. § 1257 (1994) ("Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court. . . ."). Because the Supreme Court has exclusive jurisdiction in these matters, the lower federal courts, by implication, do not. Against the statutory backdrop that lower federal courts do not have jurisdiction over direct appeals from state court rulings, the Rooker-Feldman doctrine instructs that lower federal courts cannot exercise jurisdiction over the functional equivalent of such an appeal. See, e.g., District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 282 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Specifically, lower federal courts

⁸ Because Mareello did not raise this issue and the Court did not rule on it, the Court will treat her argument as, in essence, a motion to dismiss for lack of subject matter jurisdiction rather than a motion for reconsideration.

cannot engage in appellate review of state court determinations or constitutional claims that have been previously adjudicated in any state court, or claims that are “inextricably intertwined” with such claims because ruling on them would effectively void or reverse as erroneous a related state court decision. Gulla v. North Strabane Township, 146 F.3d 168, 170 (3d Cir. 1998).

Although the language of 28 U.S.C. § 1257 applies only to final judgments of a state’s highest court, the Rooker-Feldman doctrine has been extended to apply to the decisions of lower state courts, even decisions that are interlocutory in nature. In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod’s Liab. Litig., 134 F.3d 133, 143 (3d Cir. 1998); Port Auth. Police Benevolent Ass’n, Inc. v. Port Auth. of New York and New Jersey Police Dep’t, 973 F.2d 169, 177-78 (3d Cir. 1992). Consequently, if a litigant in federal court seeks relief that would effectively void or reverse a related state court decision, the lower federal courts have no jurisdiction over the subject matter of that claim.⁹

Of the few federal courts to consider the application of the Rooker-Feldman doctrine to the issuance of arbitral antisuit injunctions, all would agree that a federal court may issue such an injunction when a federal petition is filed before a state

⁹ Habeas corpus petitions, or actions sounding in habeas corpus, are excepted from the Rooker-Feldman bar. Plyler v. Moore, 129 F.3d 728, 732 (4th Cir. 1997).

action. Issuing an arbitral antisuit injunction is also proper if, although the state action preceded the federal one, the federal court rules before a state court rules on the merits. There is also general agreement that federal courts should not issue such an injunction if the state court issues a ruling on the merits before the federal complaint is filed. In other words, if the federal complaint is filed in response to an adverse state court ruling, it should be considered an impermissible appeal of that ruling. See Brown & Root, Inc. v. Breckenridge, 211 F.3d 194, 199 (4th Cir. 2000); International Cement Aggregates, Inc. v. Antilles Cement Corp., 62 F. Supp. 2d 412, 415 (D. Puerto Rico 1999).

This case, however, presents the situation where a federal complaint is filed after a state court complaint, but the state court rules on the merits before the federal court. Moreover, Central Reserve filed its Petition to Compel several days before filing its Preliminary Objections in state court. Under these facts, issuing an arbitral antisuit injunction is proper. See Distajo, 107 F.3d at 138. Filing a petition for an arbitral antisuit injunction before a state court rules on the merits renders the Rooker-Feldman bar inapposite because the federal petition cannot be characterized as an appeal. See id.; see also Brown & Root, 211 F.3d at 202 (noting that, unlike Distajo, “[the] federal petition comes on the heels of the state court’s

rejection of practically the same motion"); International Cement Aggregates, 62 F. Supp. 2d at 415 (same). The Distajo decision is well reasoned because a contrary outcome would encourage a rush to judgment whereby the quicker court would win jurisdiction over the claim. Although the Distajo decision would seem to encourage litigants to file immediate federal claims in an effort to hedge their state court bets, this result seems preferable to determining courts' jurisdiction merely by the timing of their orders.

In the instant case, Marelllo filed her state court Complaint on June 6, 2000. Central Reserve promptly filed its federal Complaint and Motion to Compel Arbitration on June 30, 2000. Facing potential default judgment against it, Central Reserve filed its Preliminary Objections in state court on July 5, 2000. The state court judge overruled Central Reserve's Preliminary Objections on September 20, 2000. This Court then ruled on Central Reserve's Motion to Compel on October 3, 2000.

Although this Court's Order of October 3, 2000 succeeded the state court's denial of Central Reserve's Preliminary Objections, Central Reserve's Complaint and Motion to Compel preceded it. Central Reserve filed the instant Complaint and Motion to Compel Arbitration almost three months before any decision on the merits by the state court, and several days before its Preliminary Objections in state court. At the time it was filed, Central

Reserve's Motion to Compel Arbitration was neither a direct appeal from an adverse state ruling, nor the functional equivalent thereof. Indeed, there was no ruling on the merits from which to appeal. See Distajo, 107 F.3d at 138. Because the filing of a state court complaint does not in and of itself implicate the Rooker-Feldman doctrine, this Court has subject matter jurisdiction over this matter. Accordingly, Mareello's Motion to Amend and Correct this Court's Order of October 3, 2000, is denied.¹⁰

¹⁰ The Court will also deny Mareello's Motion to Dismiss Central Reserve's Motion to Stay Court Proceedings. On October 3, 2000, the Court granted Central Reserve's Motion to Compel Arbitration but neglected to deny Mareello's Motion to Dismiss that Motion. The Court will do so now. Moreover, in order to clarify its October 3, 2000 Order, the Court will enjoin all parties, not merely Mareello, from participating in the related state court action.

IN THE UNITED STATES DISTRICT COURT
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CENTRAL RESERVE LIFE INSURANCE	:	CIVIL ACTION
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v.	:	
	:	
DOROTHY A. MARELLO	:	No. 00-3344

O R D E R

AND NOW, this day of January, 2001, in consideration of the Defendant's Motion to Amend and Correct this Court's Order of October 3, 2000 (Doc. No. 18), Plaintiff's Response (Doc. No. 23), Defendant's Reply (Doc. No. 24), and the parties' various supplemental memoranda (Doc. Nos. 21, 22, 26 and 27), it is

ORDERED that:

1. Defendant's Motion to Amend and Correct this Court's Order of October 3, 2000 (Doc. No. 18) is **DENIED**.
2. Defendant's Motion to Dismiss Plaintiff's Motion to Compel Arbitration and Stay State Proceedings (Doc. No. 4) is **DENIED**.
3. All parties are **ENJOINED** from participating in the related

state court proceeding.

BY THE COURT:

JAMES MCGIRR KELLY, J.